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THE DIRECTV GROUP, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. C-05-01114 JW (HRL) MDL No. 1665 **DEFENDANT DIRECTV GROUP, INC.'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF THE COURT'S CONSTRUCTION OF THE TERM "TRANSCEIVER"; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Hearing Date: September 8, 2005 Hearing Time: 9:00 a.m. Courtroom: Honorable James Ware
AND ALL RELATED AND/OR CONSOLIDATED CASE ACTIONS	

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 8, 2005, at 9:00 a.m., in the Courtroom of Honorable James Ware, defendant DIRECTV GROUP, INC. ("DIRECTV") will and hereby does move the Court for reconsideration of the Court's construction of the term "transceiver."

Defendant DIRECTV respectfully requests this Court to reconsider the Court's previous construction of the term "transceiver" and construe the term to mean "a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium."

This motion is based upon this Notice, the Memorandum of Points and Authorities, all of the papers filed in connection therewith, and upon all papers and files in this action, and such other evidence and arguments as may be presented at or before the hearing thereon.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to the Court's Order of June 21, 2005, Defendant DIRECTV GROUP, INC. ("DIRECTV") requests reconsideration of the Court's construction of the term "transceiver" that is recited in the claims of the '702 patent.[1] In its July 2004 Markman Order, this Court defined the term "transceiver" as "a singular device capable of both sending and receiving information." Although this definition is substantially correct, it is respectfully submitted that the definition as it stands is not complete. Without greater precision and context, this definition unduly expands patent protection beyond what should be afforded by the '702 patent. For example, a photocell receives information by way of photons and sends information by way of electrical energy. An audio speaker receives information by electrical energy and sends information by way of sound. Such devices appear to fall within the scope of the Court's definition. Yet, no one skilled in the art would call them transceivers.

Missing from the Court's definition is that a transceiver must send and receive data over the same communication medium. Accordingly, a person of ordinary skill in the art would define the term "transceiver" to mean "a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium." This construction of the term is supported by the intrinsic and extrinsic evidence. This construction was not argued to the Court in prior proceedings.

For these reasons, as set forth more fully below, and in the accompanying Declaration of Andrew Lippman, DIRECTV respectfully requests reconsideration of the term "transceiver." DIRECTV submits that the definition proposed herein better reflects the context of the specification and more appropriately limits the term to its proper scope.

II. BACKGROUND

Acacia brings the claims of the '702 patent against nearly 50 defendants representing three major sectors of the American telecommunications industry. All the claims of the '702 patent are

[1] The following defendants join in this motion: Echostar Satellite LLC and Echostar Technologies Corporation.

directed to a communication system that includes a transmission system and a reception system. In each of the independent claims 1, 17 and 27, a transceiver is recited as part of the reception system that receives data from the compressed data library of the transmission system. (Wong Decl. Ex. A, '702 patent at 19:26-47, 20:40-21:6, and 21:39-57.)[2]

During the prior Markman proceedings, Acacia asserted that "transceiver" should mean "a device that is capable of both transmitting and receiving data." (Wong Decl. Ex. B at pp. 25-27.) The New Destiny Defendants asserted that the term should mean "a combination of a transmitter and a receiver in a common housing that uses common circuit components for both transmitting and receiving." (Wong Decl. Ex. C at pp. 27-28.)

In support of its claim construction, Acacia submitted to the Court four dictionaries that listed a total of nine definitions. Acacia also reported that a Delaware Court, in *Inline Connection Corp. v. AOL Time Warner, Inc.*, construed "transceiver" consistent with Acacia's proposed construction.[3] The New Destiny Defendants presented to the Court two different dictionaries, adding three more definitions for the Court to consider.

The parties' opposition briefs generally argued over which of the recited dictionary definitions should be adopted by the Court. Acacia charged that New Destiny Defendants' construction was erroneous because it included limitations not found in all the definitions and because they were not described in the specification. (Wong Decl. Ex. D at pp. 21-24.) New Destiny Defendants charged Acacia of picking and choosing definitions that favored Acacia from the dictionaries. (Wong Decl. Ex. E at pp. 23-25.)

The Court construed the term "transceiver" to mean "a singular device capable of both sending and receiving information." (Wong Decl. Ex. F at p. 36.) The Court based this construction on the definitions submitted by the parties, and on the block level depiction of the transceivers in the diagrams of the specification. (*Id.*)

Lost in the battle of the dictionary definitions was the meaning of "transceiver" that a person of ordinary skill in the art would have after reading the '702 patent.

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[2] Declaration of Charles C. Wong is filed herewith.

[3] 302 F.Supp. 2d 307, 324-325 (D. Del. 2004).

III. LAW ON CLAIM CONSTRUCTION

The Federal Circuit's recent ruling in *Phillips v. AWH Corp.*, ___ F.3d ___, 2005 WL 1620331, *32 (Fed. Cir. 2005)(*en banc*), emphasized the importance of the patent specification in determining the meaning of claim terms. *Phillips* affirmed that the terms of a claim are construed with the meaning with which they are presented in the patent document. *Phillips*, 2005 WL 1620331 at *33; *Merck & Co. v. Teva Pharms, USA, Inc.*, 347 F.3d 1367, 1371 (Fed. Cir. 2003). Claims are directed to the invention that is described in the specification; they have no meaning removed from the context from which they arose. *Phillips*, 2005 WL 1620331 at *32 (Fed. Cir. 2005)(*en banc*); *Netword, LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed. Cir. 2001). A definition of a claim term is the definition that the term would have to a person of ordinary skill in the art at the time of the invention. *Phillips*, 2005 WL 1620331 at *22; *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004). "The claim construction that stays true to the claim language and that most naturally aligns with the patent's description will be, in the end, the correct construction." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998).

It is permissible for the Court to consider extrinsic evidence. *Markman v. Westview Instruments Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995)(*en banc*). Extrinsic evidence cannot, however, contradict any definition found or ascertained by the reading of the patent documents and must be consistent with the words used by the patentees. *Phillips*, 2005 WL 1620331 at *39-40. A technical term used in a patent is generally interpreted as meaning what a person of ordinary skill in the field of the invention would understand it to mean. *Bell Atlantic Network Services, Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 1567 (Fed. Cir. 2001).

Extrinsic evidence is less significant than intrinsic evidence. *Phillips*, 2005 WL 1620331 at *37-38. Extrinsic evidence at odds with the intrinsic evidence should not be adopted. *Phillips*, 2005 WL 1620331 at *39-40. The Court should take care when considering dictionary definitions.

> The main problem with elevating the dictionary to such prominence is that it focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent. Properly viewed, the "ordinary

> meaning" of a claim term is its meaning to the ordinary artisan after reading the entire patent. Yet heavy reliance on the dictionary divorced from the intrinsic evidence risks transforming the meaning of the claim term to the artisan into the meaning of the term in the abstract, out of its particular context, which is the specification. The patent system is based on the proposition that claims cover only the invented subject matter. As the Supreme Court has stated, "it seems to us that nothing can be more just and fair, both to the patentee and the public, than that the former should understand, and correctly describe, just what he has invented, and for what he claims a patent." *Merrill v. Yeomans, 94 U.S. at 573-74*. The use of a dictionary definition can conflict with that directive because the patent applicant did not create the dictionary to describe the invention. Thus, there may be a disconnect between the patentee's responsibility to describe and claim his invention, and the dictionary editors' objective of aggregating all possible definitions for particular words.

Phillips, 2005 WL 1620331 at *48-49. (emphasis added) Thus, the "dictionaries first" process of claim construction should not be followed because of the danger of expanding the meaning of a claim term beyond the context of the specification.

IV. ARGUMENT

A person of ordinary skill in the art understands that a transceiver is a technical term which stands for a device that sends and receives data over the same communication medium. For example, an Ethernet transceiver both sends and receives information over an Ethernet network cable. Likewise, a radio transceiver both sends and receives information over the radio. Stated another way, a transceiver operates and interfaces with a single communication medium to send and receive information over that medium. (Lippman Decl. ¶ ¶ 22-23.)[4] This implicit understanding is evidenced in the context of the specification of the '702 patent and woven through all the definitions in relevant references.

A. The Context of the Specification Indicates That "Transceiver" Means A Singular Device That Interfaces With A Single Communication Medium And That Is Capable of Sending And Receiving Data Over That Communication Medium.

1. Claims of the '702 patent.

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips,* 2005 WL 1620331 at * 20; *Innova,*

[4] Declaration of Andrew Lippman is filed herewith.

381 F.3d at 1115. In construing a term, the claims themselves provide substantial guidance; the context of the surrounding words in the claim must be considered. *Phillips*, 2005 WL 1620331 at *28; *ACTV, Inc. v. Walt Disney Co., 346 F.3d 1082, 1088 (Fed. Cir. 2003).*

Claims 1, 17 and 27 of the '702 patent requires a transceiver to be one of a plurality of parts in the reception system. With the term "transceiver" highlighted in bold text, Claim 17 in relevant part reads,

> 17. A communication system comprising:
> a transmission system at a first location in data communication with a reception system at a second location,
>
> wherein said transmission system comprises,
> …
> …; and
>
> wherein said reception system comprises
> a **transceiver** in data communication with said transmission system;
> a receiver format converter in data communication with said transceiver;
> a storage device in data communication with said receiver format converter;
> user playback controls in data communication with said storage device;
> a digital decompressor in data communication with said receiver format converter, and
> an output data converter in data communication with said digital decompressor.

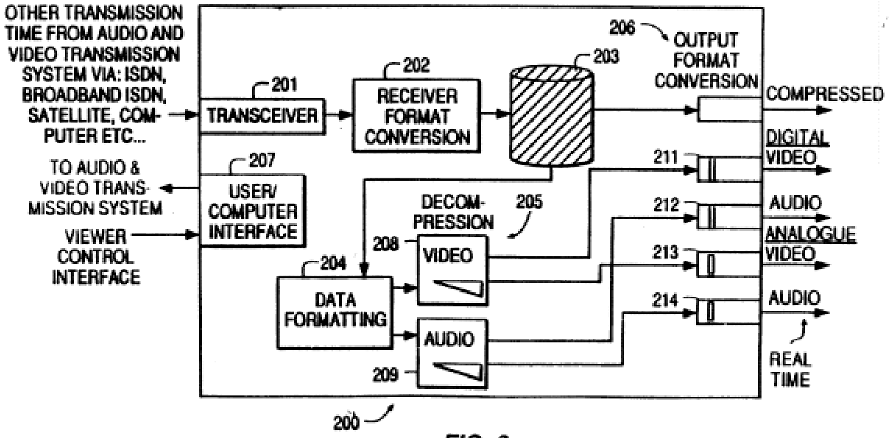
Claims 1 and 27 are similar to claim 17 in relevant parts.

While the claims referenced above generally indicate that the transceiver component of the reception system must be "in data communication" with the transmission system, Acacia and New Destiny agreed that a transceiver is "a device capable of both sending and receiving information." (Wong Decl. Ex. F at p. 36). As discussed above, however, this definition was based on each side's submittal to the Court of several dictionary definitions. Unfortunately, following *Texas Digital*'s "dictionary first" claim construction process resulted in a definition which is too broad and out of context with the specification.

As Dr. Lippman indicates in his declaration, any device that can transmit and receive information would be covered under the Court's definition of "transceiver." This could include, for example, photocells which receive a transmission of information from a light source and which transmit an electronic signal derived from the received light. Audio speakers which receive electrical signals containing information and which transmit physical sound waves through the air would also fall within the Court's definition. One skilled in the art, however, would not think of a photocell or an audio speaker as a transceiver. (Lippman Decl. ¶ 24.)

A transceiver is a device which is distinct from a transmitter or a receiver. Yet, a transmitter receives information and transmits it to some other location. Likewise, a receiver receives information and outputs that information to some other device or location. Unless a transceiver is defined more particularly, the broad definition adopted by the Court will cause it to lose its independent significance. (Lippman Decl. ¶¶ 24-25.)

A striking example of this loss of distinction occurs when applying the Court's definition to the reception system of Figure 6 in the '702 patent. As shown below, Figure 6 includes transceiver 201 as one component of the reception system 200. The reception system receives a transmission from the transmission system and outputs or "transmits" such information to a device such as a television, audio amplifier or audio/video recorder. Yet, the inventors did not refer to the reception system as a transceiver merely because it both receives and transmits information. Rather, they distinguished between the reception system and the transceiver. Thus, the Court's definition is not consistent with the specification. (Lippman Decl. ¶ 25.) A more particular definition based on the context of the specification is needed.



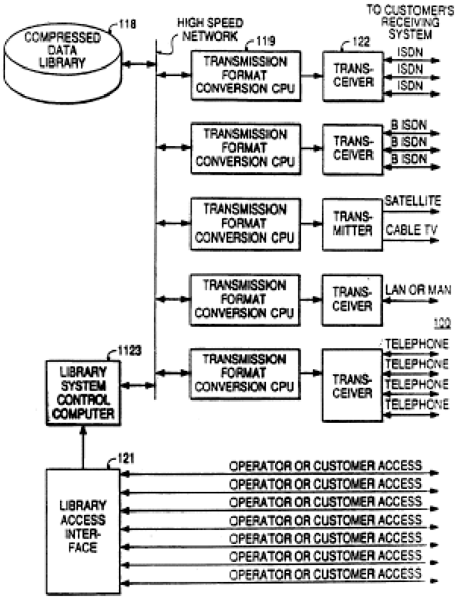
OTHER TRANSMISSION TIME FROM AUDIO AND VIDEO TRANSMISSION SYSTEM VIA: ISDN, BROADBAND ISDN, SATELLITE, COMPUTER ETC...
TO AUDIO & VIDEO TRANSMISSION SYSTEM
VIEWER CONTROL INTERFACE
201
TRANSCEIVER
202
RECEIVER FORMAT CONVERSION
203
206
OUTPUT FORMAT CONVERSION
207
USER/ COMPUTER INTERFACE
DECOMPRESSION
205
208
VIDEO
204
DATA FORMATTING
AUDIO
209
211
212
213
214
COMPRESSED
DIGITAL VIDEO
AUDIO
ANALOGUE VIDEO
AUDIO
REAL TIME
200

FIG. 6

2. Specification of the '702 patent.

The specification of the '702 patent describes a system in which transceivers are used such that each interfaces with a single communication medium, and each sends and receives data over the same communication medium. In particular, the '702 patent describes a transmission system that sends user requested data to the reception system, and a reception system that sends back confirmation of receiving the data to the transmission system. An embodiment that performs this "transmit-confirm" process, called the two way communication process, is disclosed in the '702 patent. '702 patent, 16:9-16. This embodiment makes use of transceivers consistent with the definition proposed herein.

In the two way communication process, transceivers are used to send and receive data over a single communication medium between the transmission system and the reception system. This can be seen in Figure 2b of the '702 patent (shown below). Figure 2b shows a series of one-to-one arrangements in which a single transceiver is interfaced with a single communication medium, *i.e.* ISDN, B-ISDN, LAN or MAN, and telephone, respectively. Double-headed arrows pointing both to and from each transceiver depict the two way process of sending and receiving information over the same communication medium. The transceivers are shown as interfacing with a single medium of communication because a transceiver cannot send and receive data over different mediums. (Lippman Decl. ¶ 27.)



TO CUSTOMER'S RECEIVING SYSTEM
COMPRESSED DATA LIBRARY
118
HIGH SPEED NETWORK
119
122
TRANSMISSION FORMAT CONVERSION CPU
TRANS-CEIVER
ISDN
ISDN
ISDN
B ISDN
B ISDN
B ISDN
SATELLITE
TRANS-MITTER
CABLE TV
LAN OR MAN
100
TELEPHONE
TELEPHONE
TELEPHONE
TELEPHONE
1123
LIBRARY SYSTEM CONTROL COMPUTER
121
LIBRARY ACCESS INTER-FACE
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
OPERATOR OR CUSTOMER ACCESS
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FIG. 2b

The specification of the '702 patent also includes a transceiver in the reception system of the preferred embodiment. The reception system is depicted in Figure 6 which is shown below.

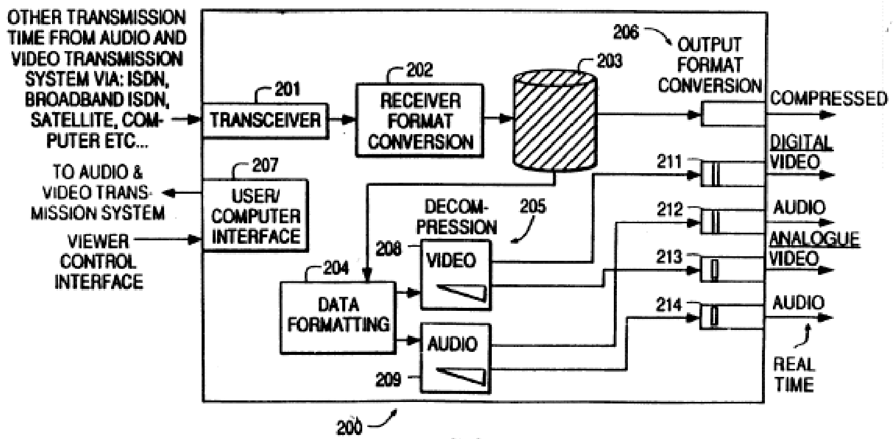
OTHER TRANSMISSION TIME FROM AUDIO AND VIDEO TRANSMISSION SYSTEM VIA: ISDN, BROADBAND ISDN, SATELLITE, COMPUTER ETC...
TO AUDIO & VIDEO TRANSMISSION SYSTEM
VIEWER CONTROL INTERFACE
201
TRANSCEIVER
202
RECEIVER FORMAT CONVERSION
203
206
OUTPUT FORMAT CONVERSION
COMPRESSED
207
USER/ COMPUTER INTERFACE
DECOMPRESSION
205
208
VIDEO
204
DATA FORMATTING
AUDIO
209
211
DIGITAL VIDEO
212
AUDIO
213
ANALOGUE VIDEO
214
AUDIO
REAL TIME
200

FIG. 6

In Figure 6, the transceiver 201 is shown receiving communications from the transmission system via various communication mediums. Although Figure 6 depicts transceiver 201 in its mode of receiving communications from the transmission system, based on the description of the reception system in the specification, one skilled in the art would understand that the transceiver is also used to transmit certain information back to the transmission system on a common medium. For example, the specification states:

> In order that reception is performed efficiently, the reception system 200 confirms reception of the initial data block before receiving the remaining data blocks whenever possible (step 5060). After all data blocks have been received and reception is confirmed, the communications controller breaks the physical connection to the reception system 200 (step 5070).

'702 patent, 16:23-29 (emphasis added).

Referring to Figure 6, transceiver 201 is the only device capable of transmitting to the transmission system on a common medium a confirmation that the initial data block has been received. Although user/computer interface 207 is shown having output to the audio & video transmission system, that interface is not linked in any way to the reception of the audio & video transmission. Its input is viewer control information, not audio or video data. Thus, it cannot transmit the required confirmation. In contrast, we know from Figure 2b that a transceiver is capable of sending and receiving information on a common medium. The only device which can receive the audio and video transmission, and send back a confirmation that such transmission has been received, is transceiver 201. (Lippman Decl. ¶ 28.)

In the context of the specification (and consistent with its ordinary meaning which is discussed in Section B *infra*), one skilled in the art would understand that a transceiver is a two way communication device that interfaces with a single communication medium and is capable of sending and receiving data over that communication medium. (Lippman Decl. ¶ 29.)

B. The Extrinsic Evidence Also Requires The Transceiver To Send and Receive Over The Same Communication Medium

There is no magic formula for conducting claim construction; a Court is not barred from considering any particular sources or required to analyze sources in any specific sequence. *Phillips*, 2005 WL 1620331 at *59. That a transceiver interfaces with a single communication medium and sends and receives data over that communication medium is implicit in the technical dictionaries that were submitted to the Court during the prior proceedings. As explained in the expert declaration of Andrew Lippman, woven through the relevant dictionary definitions is that a transceiver sends and receives data or information over a common medium.

For example, in IEEE 4th edition (1988) and 5th edition (1993) dictionaries, a transceiver is defined as,

> **transceiver** (1) (data transmission). The combination of radio transmitting and receiving equipment in a common housing, usually for portable or mobile use, and employing common circuit components for both transmitting and receiving.

This definition explicitly provides that the transmitting and receiving functions occur over the radio - a common communication medium. (Lippman Decl. ¶ 30.)

Also, in the Dictionary of Information Technology, 2d edition and the Computer Dictionary Handbook, 1980, a transceiver is defined as "a terminal device that can both transmit and receive signals." Although it is not evident what communication medium is contemplated by reading this definition, ascertaining the meaning of the term "terminal" provides the context that properly defines "transceiver" as understood by one skilled in the art. In the Dictionary of Information Technology, "terminal" is defined as,

> In communication, a point in the system where information can be transmitted or received.

And in the Computer Dictionary Handbook, "terminal" is defined as,

> A point at which information can enter or leave a communication netwrok.

Thus, "transceiver" as defined in the Dictionary of Information Technology, 2d edition and the Computer Dictionary Handbook, is germane to the data communication field. The transceiver is a device that can access a communication network to receive or transmit information. This is achieved by interfacing with, for example, a network cable - a common communication medium. (Lippman Decl. ¶ 31.)

Finally, the Dictionary of Computing 3d edition defines transceiver as,

> **transceiver** *Acronym for* transmitter and receiver. A device that can both transmit and receive signals on a communication medium. Many communication devices, including *modems, *codecs, and terminals, are transceivers.

This definition explicitly recites that the transmitting and receiving occur over a single communication medium. (Lippman Decl. ¶ 32.)

V. CONCLUSION

For the foregoing reasons, the Court should reconsider its prior construction of the term "transceiver." Based on the context of the specification, and consistent with relevant dictionary definitions, the Court should construe that term to mean " a singular device that interfaces with a single communication medium and that is capable of sending and receiving data over that communication medium."

Dated: July 29, 2005

Respectfully submitted,

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By: /s/
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